

**REMARKS:**

Claim Rejections - 35 USC §112

Claims 1-6 and 10-12 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner objected to the recitation in claim 1 that the engaging means engages either the first or the second constraining means or both, and that the retaining means are for maintaining the engaging means within the first and the second constraining means.

The Examiners rejection of indefiniteness is well taken and claim 1 has been amended to make clear that the engaging means selectively engages the first constraining means, and that the retaining means maintains the engaging means within the first constraining means when the first constraining means is engaged and for maintaining the engaging mean in position relative to the second constraining means when the second constraining means is engaged. No new matter has been added by this amendment.

Claim Rejection - 35 USC §102

Claims 1-3 have been rejected under 35 U.S.C. 102(b) as being anticipated by De Mayo (US 773,579). Claim 1 has been amended,

not only to eliminate the 112 second paragraph problems, but also to set forth that the first and second constraining means each are connected to and extend from the jamb base plate and that the second constraining means is movable independently from the first constraining means. The first (c3) and second (c5) constraining means of De Mayo are both mounted to a single yoke which extends from the base plate. Movement of the yoke causes both the first and second constraining means to move in tandem. It is impossible to move one of the constraining means of De Mayo without moving the other constraining means, as now required by claim 1, the only independent claim in the application. In light of the amendment to the claims, and the failure of the De Mayo reference to meet all the current limitations, it is respectfully asserted that this claim is allowable over the De Mayo patent.

Inasmuch as claims 2 and 3 depend from claim 1, it is believed that these claims are also allowable over the De Mayo patent.

Claim 4 has been rejected under 35 U.S.C. 103(a) as being unpatentable over De Mayo (US 773,579) in view of Smith (US 4,900,075). Claim 4 depends from claim 1, whose limitations are not met by the De Mayo reference. The deficiencies of the De Mayo reference are not remedied by the Smith reference. Therefore, it is believed that claim 4 is allowable over the art of record.

Claim 5 has been rejected under 35 U.S.C. 103(a) as being unpatentable over De Mayo (US 773,579) in view of Smith (US 4,900,075), and further in view of Hoagland (US 1,154,862). Claim 5 depends from claim 1, whose limitations are not met by the De Mayo reference. The deficiencies of the De Mayo reference are not remedied by either the Smith reference or the Hoagland reference. Therefore, it is believed that claim 5 is allowable over the art of record.

#### **Allowable Subject Matter**

Claims 6 and 10 are objected to as being dependent upon a rejected base claim, but are indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It was indicated that claims 11 and 12 would also be allowable because they depend from claim 10. Because these claims all depend back to claim 1, whose rejection no longer applies in light of the amendment to claim 1, it is believed that claim 1, and all the claims dependent therefrom, including claims 6 and 10-12 are allowable as written. Further, claims 15 and 18, which were withdrawn as being drawn to a non-elected species, are entitled to be recombined at this point because they depend from claim 10, which has been indicated to contain allowable subject matter.

## Request for Reconsideration of the Breakdown of the Election

### Requirement

Applicant respectfully requests that the Examiner reconsider the breakdown of species that were designated in the Election Requirement of September 30, 2004. The traversal raised in the response to the election filed on January 31, 2005 was on the grounds that the features disclosed in Figure 11, which the Examiner designated as an entirely separate species, was not in fact a separate species, but rather an element that could be part of any of the Species 1, 2, or 3. The examiner responded that this was not persuasive because the fact that it is "optional" is of little consequence, since it is otherwise patentably distinct. While Applicant agrees that the feature of Figure 12, which is a tongue extending from the second constraining means, is a patentable feature, he continues to believe that it is not appropriate to classify it as a separate species all on its own for the following reason: The tongue cannot exist in isolation. It is only disclosed as part of a second constraining means of one of the three embodiments of door latch as disclosed in the invention (see specification page 13, line 19 - page 14, line 2). If the Examiner wanted to differentiate between species having the "tongue" feature on the second constraining means and species where the second constraining means has no "tongue", then it would be appropriate to require an election between the following 6

species:

1. Figs. 1-5, 7 and 8 without a tongue
2. Figs. 1-5, 7 and 8 with a tongue of Fig. 11
3. Fig. 6 without a tongue
4. Fig. 6 with a tongue of Fig. 11
5. Figs. 9 and 10 without a tongue
6. Figs. 9 and 10 with a tongue of Fig. 11

However, to say that the tongue on the second constraining means exists as a species that excludes the features of any of the species which the Examiner designated in the original election requirement of September 30, 2004 as Specie 1 (Figs. 1-5, 7 and 8), Specie 2 (Fig. 6), and Specie 3 (Figs. 9 and 10) makes no sense since the only disclosed existence of the tongue of Fig. 11 is in combination with one of these three species (again, see specification page 13, line 19 - page 14, line 2). This is why the Applicant's response to the election stated that he elected "Figs. 9 and 10 in combination with the tongue of Figure 11".

In any case, inasmuch as it is believed that claim 1 is allowable for the reasons detailed above, and each of claims 2-18 depend from claim 1, the election requirement may, at this point, be moot since all claims would be entitled to be recombined and allowed due to their dependence on an allowable claim. If, however, a new rejection is made against claim 1, it is believed that claims 13, 15-16, and 18 should be recombined anyway because

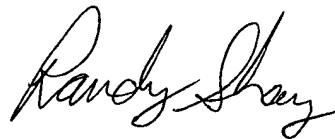
they are drawn to the species which was elected, namely Figs. 9-10 in combination with the tongue of Fig. 11.

**CONCLUSION:**

In light of the present amendments to the specification and claims and for the foregoing reasons, it is believed that all the claims now pending in the present application are allowable, and the present application is in condition for allowance. No new matter has been added by the present amendment. Accordingly, favorable reconsideration of the application in light of the amendment and remarks is respectfully requested.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned representative at the number listed below.

Respectfully submitted,

A handwritten signature in cursive script that reads "Randy Shay".

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